

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
525 W. ALLEGAN, LANSING, MI 48933

NOTICE OF CONTRACT NO. 071B5500084

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Landmark Energy Consulting, LLC 2159 Allen Road Kimball, MI 48074	Becki Grabowski	LandMarkEC@comcast.net
	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
	810-334-6646	3052

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	DTMB	Melissa Sambiagio	517-284-7016	sambiagiom@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Melissa Sambiagio	517-284-7016	Sambiagiom@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Utilities Consultant			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 years	03/1/2015	02/28/2018	4 – one year
PAYMENT TERMS	F.O.B.	SHIPPED TO	
Net 45 days	N/A	N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:		\$122,400.00	

Orders for delivery will be issued directly by the Department of Technology, Management & Budget through the issuance of a Purchase Order Form.

For the Contractor:

**Becki Grabowski,
Contract Administrator
Landmark Energy Consulting, LLC**

Date

For the State:

**Sharon Walenga-Maynard,
Sourcing Director
State of Michigan**

Date



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT ("**Contract**") is agreed to between the State of Michigan (the "**State**") and Landmark Energy Consulting, LLC ("**Contractor**"), a Michigan, Limited Liability Corporation. This Contract is effective on March 1, 2015, ("**Effective Date**"), and unless terminated, expires on February 28, 2018.

This Contract may be renewed for up to four (4) additional one (1) year period(s). Renewal must be by written agreement of the parties and will automatically extend the Term of this Contract.

The parties agree as follows:

- Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Exhibit A – Statement of Work** (the "**Contract Activities**"). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Exhibit A.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State's operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State's quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

- Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
Melissa Sambiagio 525 W. Allegan Street Constitution Hall – 1N Lansing, MI 48913 sambiagiom@michigan.gov 517-284-7016	Becki Grabowski, Owner 2159 Allen Road Kimball, MI 48074 landmarkec@comcast.net 810-334-6646

- Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms and conditions of this Contract (each a "**Contract Administrator**");

State:	Contractor:
Melissa Sambiagio 525 W. Allegan Street Constitution Hall – 1N Lansing, MI 48913 sambiagiom@michigan.gov 517-284-7016	Becki Grabowski, Owner 2159 Allen Road Kimball, MI 48074 landmarkec@comcast.net 810-334-6646

4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a "Program Manager"):

State: <i>Melissa Sambiagio</i> <i>525 W. Allegan Street</i> <i>Constitution Hall – 1N</i> <i>Lansing, MI 48913</i> <i>sambiagiom@michigan.gov</i> <i>517-284-7016</i>	Contractor: <i>Becki Grabowski, Owner</i> <i>2159 Allen Road</i> <i>Kimball, MI 48074</i> <i>landmarkec@comcast.net</i> <i>810-334-6646</i>
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5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Exhibit A) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by an company with an A.M. Best rating of "A" or better and a financial size of VII or better.

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04; (2) include a waiver of subrogation; and (3) for a claims-made policy, provide 3 years of tail coverage.
Automobile Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
Hired and Non-Owned Motor Vehicle Insurance	
N/A	No SOM owned vehicle will be used by or available to the Contractor during the entire term of this contract.
Professional Liability (Errors and Omissions) Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate <u>Deductible Maximum:</u> \$50,000 Per Loss	

If any of the required policies provide **claim-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of contract work; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the contract of work; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

7. Reserved.

8. Reserved.

9. Independent Contractor. Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

10. Subcontracting. Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.

11. Staffing. The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

12. Background Checks. Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

13. Assignment. Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Contract.

14. Change of Control. Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

15. Ordering. Contractor is not authorized to begin performance until receipt of authorization as identified in Exhibit A.

- 16. Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Exhibit A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 23, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

- 17. Delivery.** Contractor must deliver all Contract Activities within the State premises with transportation and handling charges paid by Contractor. All containers and packaging becomes the State's exclusive property upon acceptance.
- 18. Reserved.**
- 19. Reserved.**

- 20. Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Exhibit A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all prices are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.

Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

- 21. Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Exhibit A.
- 22. Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
- 23. Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 24, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

- 24. Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
- 25. Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
- 26. General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

27. **Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
28. **Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
29. **Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
30. **State Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.
31. **Reserved.**
32. **Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.
- a. **Meaning of Confidential Information.** For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
- b. **Obligation of Confidentiality.** The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. **Cooperation to Prevent Disclosure of Confidential Information.** Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate

the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any non-State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party.

33. **Reserved.**

34. **Reserved.**

35. **Reserved.**

36. **Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

37. **Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 23, Termination for Cause.
38. **Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must

immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

39. Compliance with Laws. Contractor must comply with all federal, state and local laws, rules and regulations.

40. Reserved.

41. Nondiscrimination. Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.

42. Unfair Labor Practice. Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

43. Governing Law. This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.

44. Non-Exclusivity. Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.

45. Force Majeure. Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.

46. Dispute Resolution. The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

47. Media Releases. News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.

48. Website Incorporation. The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.

49. Order of Precedence. In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) Exhibit A; (d) any other exhibits; and (e) the Contract.

50. Severability. If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.

51. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
52. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
53. **Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a “**Contract Change Notice**”).



STATE OF MICHIGAN

Contract No. 071B5500084
Utility Consultant - Statewide

EXHIBIT A STATEMENT OF WORK - CONTRACT ACTIVITIES

This exhibit identifies the requirements of the Contract.

Background

The State has undertaken, and will continue to add various projects to minimize the cost and usage of utilities such as natural gas, electricity, and steam. Projects also include energy conservation or alternative energy initiatives. The State of Michigan Energy Purchasing Cooperative Program currently includes state agencies, universities, counties, cities, and K-12 public schools. The Cooperative currently purchases natural gas together.

Requirements

The Energy Consultant will serve the State of Michigan and Cooperative Members in various capacities.

1. General

- 1.1 Daily monitoring of the energy industry, including but not limited to its regulatory changes, utility filings, factorings effecting various markets, supply, demand, macroeconomic issues, geopolitical events, weather, Michigan Public Service Commission Website ("MPSC"), etc., and providing recommendations to the State and Cooperative members.
- 1.2 Verify invoices for DTMB Financial Services – including third party energy suppliers and utilities invoices. Verification steps and key points of review include but are not limited to volumes invoiced by the supplier are accurate per applicable contract, reviewing price, fees, penalties, and tariff rates, working with utilities as needed. Maintain purchases in an Excel document, showing independent calculation of charge, fixed volume and purchases price.
- 1.3 Monitor and continuously analyze all filings or orders that may have a benefit to the State of Michigan and/or the cooperative members. Verify and negotiate public utility rate classifications on behalf of the State and Cooperative members.
- 1.4 Assist in research and development of RFPs and the evaluation of Contractor proposals for third party energy supplier purchases.
- 1.5 Assist in the coordination of the annual Cooperative meetings, including but not limited to gathering customer contact information, developing and mailing invitations, coordinating event logistics and speakers, preparing presentations, attendance, and presenting.
- 1.6 Work with the State to provide research, analysis, recommendations, cost savings approach, and project support as new, renewable, and existing utilities related projects evolve.
- 1.7 The Utilities Consultant will be a liaison to enhance the flow of information between DTMB and the following parties:
 - A. State of Michigan Agencies
 - B. Cooperative members
 - C. Michigan Public Service Commission
 - D. Public utilities
 - E. Third party energy vendors
 - F. Other entities as required

- 1.8 Upon request, meet with individual members at their facilities; provide market intelligence, budget reports, assist in creating purchasing strategies, etc. Failure to provide these services in a timely manner may be considered a breach of Contract and any resulting contract may be canceled. In the event of such cancellation, the State reserves the right to move to the next most responsive/responsible Bidder to fulfill the contract term.
- 1.9 Upon request, attend meetings, held in Lansing

2. Electricity

- 2.1 The Contractor shall continuously monitor special electricity rate programs, and alert the State and its cooperative members of any correlated implications or opportunities.
- 2.2 Electronically track the various rate programs and tariff schedules with public utilities. If usage patterns provide leverage for better contract conditions or rate structures, Contractor will negotiate with the utility on the State and/or Cooperative Member's behalf to ensure the best outcome it achieved.
- 2.3 Continuously monitor and evaluate options for cost efficient electricity purchasing, including but not limited to special rates, tariff rates, special programs or pilot programs, alternative energy and third party electricity vendors.
- 2.4 When such a program becomes available and infrastructure is in place, assist in the development of RFPs and the evaluation of proposals for third party electricity purchases.
- 2.5 Continue to review the electric third party programs available. Upon request, create a work plan to implement such a program for the State, including but not limited to:
 - A. Analyze historical load profile data for prospective facilities to confirm that the facilities would benefit economically.
 - B. Provide a savings analysis.
 - C. Develop an Implementation plan with target dates and responsibilities to achieve participation in choice programs on various utilities.
- 2.6 Assist the State in selecting an electric provider; developing RFP criteria, participate as a team member during the process and non-voting member during evaluation.

3. Natural Gas

- 3.1 Oversee natural gas public utilities, and multiple third party natural gas vendors relative to their service of State accounts and the Cooperative members. Contractor will provide monthly forecasted volumes, end of month volumes, coordination of invoicing between the Consultant and the supplier, to the utility nominations and collection of meter read data for balancing the supply versus usage for the Cooperative facilities behind Michcon, Consumers, SEMCO and MGU, and on the rare occasion, issue resolution. Contractor will also, monitor utility distribution rates and make the initial contact to change rate class if economical; work with utilities to resolve ACQ and MDQ issues on behalf of the customers, providing the necessary back up data to resolve metering issues, make certain all levels of the contract, whether it be the supply or utility distribution are upheld; and uphold the standards of excellence expected of the program.
- 3.2 Monitor utility transportation agreements for the State and coordinate actions with the utility companies to modify ACQ and MDQ values as needed. Track consumption by meter and facilitate with the necessary parties to make any changes necessary to both the ACQ and MDQ. Maintain current copies of the LDC transportation contract for the State and its members and coordinate changes that may occur from adding or subtraction of facility meters. If required levels are not maintained, the Contractor may be responsible for any and all penalties
- 3.3 Coordinate natural gas scheduling and day-to-day operations with multiple third party gas suppliers, including but not limited to first and end of month nominations, invoice allocations, meter read collections, storage injection/withdrawal, and issue resolution.
- 3.4 Monitor the administration of the State energy contracts with multiple third party natural gas suppliers, public utilities, and Cooperative members ensuring all parties are meeting their contractual requirements. Act as the Liaison between the State of Michigan and it's Cooperative members in coordinating the day to day activities of the program performing such functions as physical and financial purchase requests on the members behalf, reviewing the supplier confirmation for accuracy, transaction confirmation completion. If changes are needed to update the contracts or if modifications are necessary to meet changing conditions in the energy market, make recommendations to the State of the actions needed. Provide needed support to complete implementation of these changes. Facilitate the coordination of information providing both the third party supplier, as well as full requirements supplier, contact information for the conformation of FOM nominated volumes. Review supplier

invoices for accuracy and recommend payments. Track ending dates of contracts; if modifications are needed to meet the needs of the program members, assist the State in facilitating the change. Changes include but are not limited to, the addition or subtraction of facility meters, ACQ and MDQ requests, changes in tariff rate schedules, etc. Provide detailed billing summaries, historical usage reports, as well as cost of gas savings summaries. Work with Cooperative members that may have fixed volumes attached to the program, to monitor end dates of such obligations and work with the member for renewal or extension.

- 3.5** Monitor the administration of State natural gas contracts with gas suppliers, utilities, and Cooperative members, including but not limited to consumption, billings, nominations, allocation reports, storage withdrawal/injection expectations, meter readings, projected requirements, expiration dates and renewals. Ensure all parties are meeting their contractual requirements. Resolve any issues or conflicts in a timely manner.
- 3.6** Track historical and current usage for all State and Cooperative full requirements members by meter. Review current purchase strategy with the State for any changes; monitor and electronically track forward purchases to implement needed gas purchases and minimize utility "buy backs". Coordinate with Cooperative members to meet their needs of a purchase strategy and work to implement any forward purchases as needed. Utilize an Excel program to track and report individual members' forward purchased and open positions. List forward purchases on individual line items and
- 3.7** Review the utility monthly imbalance statements for the State and all full requirements members, confirming accuracy, supplier invoiced volumes, storage balance calculation, beginning and ending meter reads, consumption, etc. Forward copies of these statements to the gas supplier to ensure the gas supplier is also monitoring the storage needs of the State and the full requirements members. Communicate and resolve with the gas supplier regarding any foreseen issues with storage balances that may need action.
- 3.8** Calculate and track individual member blended prices, using the current State methodology and programs.
- 3.9** Review and verify monthly invoices for both volumetric and per unit discrepancies; make recommendations for payments to the suppliers. If payment is other than the invoiced amount, provide an explanation as to why a different dollar payment was recommended. Forward a copy to the applicable gas Supplier.
- 3.10** Provide a detailed allocation of the gas purchases to the individual Cooperative members such that DTMB Financial Services can accurately invoice the members, using the State methodology and programs.
- 3.11** If 3rd party transportation contracts are secured, the Contractor shall review all invoices related to transportation of natural gas, in cooperation with DTMB Financial Services. Contractor reviews all invoices verifying price, units transported, and fees against expected purchases or contracts. Communicate all discrepancies to DTMB Financial Services and the Supplier(s).
- 3.12** Support the State and/or Cooperative members in budget analysis and review for current and future time periods. Maintain usage history, including costs, for the State and each cooperative member,
- 3.13** Gather from the gas supplier the nomination schedule for the Cooperative members and the State five (5) business days before the start of the month. Review the nominations and allocate the State's forward purchases to the State utilities and provide said information to the gas supplier. Review and electronically track the nomination to historical consumption, previous months ending storage balance, and storage withdrawal/injection expectations for each participating Cooperative member and summarize, in total, by LDC. The worksheet should contain any pre-purchased volumes and allocate across the "Pooled" financial positions to those participating members. Any volumes remaining should default to the FOM pricing standards or as stated contractually
- 3.14** Maintain a summary of the forward purchases for each Cooperative member along with storage data, utility data, historical and projected usage, and an executive summary in the existing electronic Excel workbook, or alternate as approved by Cooperative member.
- 3.15** Monitor the daily natural gas market and determine if additional forward gas buys are needed for the State. If forward purchases are completed, verify accuracy, prepare the Transaction Confirmation, and forward copies to the State or Cooperative member and gas supplier for execution. Provide the same support to the full-requirements Cooperative members that request assistance in forward purchases.
- 3.16** Maintain a current electronic listing of all Transaction Confirmations, including but not limited to transaction date, volume, price, and facility.

- 3.17 Communicate, at least monthly, with the Cooperative members to learn of any changes to their operations and/or purchasing needs.
 - 3.18 Maintain electronic summary schedules of the consumption of the individual Cooperative members and State facilities participating in the Cooperative program.
 - 3.19 Maintain a daily summary of forecasted natural gas prices by utility for the State to use in preparation of the upcoming fiscal year budget and to evaluate current year budget over/under potential happenings. Update Basis costs weekly.
 - 3.20 Determine what purchasing options fit the needs of the State and the Cooperative members. If shifts in demand and supply, liquidity, third party speculators, geopolitical events, weather, etc. result in unusual circumstances in the market, discuss purchasing options with the State and the full requirements Cooperative members to address these situations.
 - 3.21 No less than annually, consult with the State to establish a set of natural gas purchasing program goals to meet future gas supply needs.
 - 3.22 Jointly, with DTMB, and on an on-going basis, answer Cooperative member questions, including those from individual State facilities.
 - 3.23 When potential Cooperative members notify the State about membership, analyze the historical usage and load patterns, determine if the potential member has an existing agreement in place and provide a course of action recommendation to the potential members. Answer any questions that may arise. If the economics provide a benefit to the potential member and the organization elects to move forward with joining the Cooperative, provide the necessary support, documents, and training to enroll the organization into the Cooperative.
 - 3.24 Gather necessary data, review Customer Choice pricing options, and recommend to the State what actions should be taken.
 - 3.25 Assist the State in negotiating contract options for additional year terms for existing natural gas contracts.
 - 3.26 Assist the State in conducting competitive pre-qualifications, developing RFP criteria, and participate as a team member during the process and non-voting member during evaluation for potential third party Suppliers.
 - 3.27 Maintain a subscription to platts Gas Daily (natural gas), providing detailed information to the State as requested.
4. **Steam**
- 4.1 If such a program is initiated, assist in the development of RFPs and the evaluation of proposals for steam as an energy source. Participate as a team member during the process and non-voting member during the evaluation process.
5. **Executive Directives, Executive Orders, and Initiatives**
- 5.1 Assist in energy audit reviews of State facilities.
 - 5.2 Assist in implementation of Directives in terms of data collection for agencies, arranging energy audits for specified facilities, and reviewing and making recommendations.
 - 5.3 Assist the State in acquiring access to funds for energy conservation projects and energy maintenance programs.
 - 5.4 Upon request, attend meetings managed by the State, held in Lansing.
 - 5.5 Upon request, meet with individual state agencies to review and assist in their compliance, normally held in Lansing.
 - 5.6 Upon request, provide assistance in the collection of energy data needed to meet the reporting requirements of the Directive.
 - 5.7 Assist state agencies in scheduling energy audits for the facilities (in particular the facilities with 24/7 operations).
 - 5.8 Maintain a listing of the audit findings as energy audits are completed for the 24/7 facilities.

- 5.9** Provide annual report to the State and full-requirements Cooperative members relative to local utility cost comparisons of tariff rates vs. Coop purchases.

6. Transition

6.1 Transition In

- A. The Contractor will be provided the following:
1. Listing of all Cooperative members including phone numbers, email addresses and copies of all paper and electronic files including but not limited to utility contracts and operational notes applicable to each member.
 2. Copies of the electronic Excel workbook(s) for the State and each Cooperative member. The Excel workbook(s) house details of the State and Cooperative members' purchases and provides needed information to DTMB Financial Services.
 3. Paper and electronic copies of the transaction confirmations associated with the current gas supply contract.
 4. Listing of all the names, email addresses, and phone numbers of the current gas supplier.
- B. Work with the previous consultant to understand:
1. All program participants, their level of participation and current needs.
 2. Any facility changes that may be currently in progress that will not resolve prior to transition.
 3. Supplier contracts.
 4. Invoicing, various workbooks, and Excel programs.
 5. Timeframes for communication of first of month nominations, invoice allocation, end of month invoicing, etc.

6.2 Transition Out

- A. The current consultant will work with the newly awarded Contractor to complete the following tasks:
1. Contact all Cooperative members to execute the necessary documents removing the current consultant from the utility authorization contact list and to add the new Contractor's name.
 2. Work with the State to execute the necessary documents removing the current consultant from the utility authorization contact list and to add the new Contractor's name.
 3. Review all the paper and electronic files with the new Contractor as said files move to the Contractor.
 4. Meet with the new Contractor and walk-through each member's electronic Excel workbook.

7. Training

- 7.1** The Contractor must create, assist and provide training, including documentation and training materials, as required by the State as it relates to new utilities, Cooperative members, meter reads, State and/or Cooperative member's electronic Excel workbooks; new State staff; including procurement, accounts payable, and/or Program Managers.

8. Acceptance Criteria

In order for monthly invoices to be approved for payment, the Contractor must have submitted timely, correct information, have no unapproved outstanding issues, including but not limited to:

- A. Monthly review of natural gas supplier invoices, coordinate and successfully resolve any issues to ensure the State can pay within 45 days.
- B. Monthly State electronic Excel workbook submitted accurately and within the timeframe requested by the State
- C. Monthly Cooperative Member Excel workbooks submitted accurately and within the timeframe required to ensure invoice payment to the State within 30 days.
- D. Ensure questions or complaints are resolved to the satisfaction of the inquirer, i.e State, Cooperative member, utility provider, potential member, etc., within a reasonable timeframe.
- E. Monitor co-op member usage and coordinate public utility communication to ensure ACQ/MDQ are kept at required levels.
- F. Must meet reporting requirements as stated.
- G. Accurate preparation, tracking, and verification of Transaction Confirmations.

Reported failure to provide these services in a timely manner may be considered a breach of Contract, and any resulting contract may be canceled. In the event of such cancellation, the State reserves the right to move to the next most responsive/responsible bidder to fulfill the contract term.

9. Staffing**9.1 Work Hours**

The Contractor must provide Contract Activities during the State's normal working hours Monday – Friday 7:00 a.m. to 6:00 p.m. EST/EDT, and possible sporadic night and weekend hours depending on the requirements of the project.

9.2 Key Personnel

- A. The Key Personnel appointed by the Contractor is Becki Grabowski; see Section 2 – Standard Terms and Conditions. Key Personnel must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquiries within twenty-four (24) hours.
- B. The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State's Project Manager, and provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. The State may require a 30-calendar day training period for replacement personnel.
- C. Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("**Unauthorized Removal**"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under Termination for Cause in the Standard Terms.
- D. It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under Termination for Cause, Contractor will issue to the State the corresponding credits set forth below (each, an "Unauthorized Removal Credit"):
 - 1. For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be \$25,000.00 per individual if Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least 30 calendar days before the Key Personnel's removal.
 - 2. If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 calendar days, in addition to the \$25,000.00 credit specified above, Contractor will credit the State \$833.33 per calendar day for each day of the 30 calendar-day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total Unauthorized Removal Credits that may be assessed per Unauthorized Removal and failure to provide 30 calendar days of shadowing will not exceed \$50,000.00 per individual.

Contractor acknowledges and agrees that each of the Unauthorized Removal Credits assessed above: (i) is a reasonable estimate of and compensation for the anticipated or actual harm to the State that may arise from the Unauthorized Removal, which would be impossible or very difficult to accurately estimate; and (ii) may, at the State's option, be credited or set off against any fees or other charges payable to Contractor under this Contract.

9.3 24-Hour Emergency Contact Information

The Contractor must be available for emergency calls 24 hours per day. See Section 2 – Standard Terms & Conditions.

9.4 Organizational Chart

The Contractor has no employees or subcontractors; all duties and responsibilities will be provided by Becki Grabowski.

9.5 Disclosure of Subcontractors

No subcontractors will be utilized for the completion of this contract. If; however, the Contractor intends to utilize subcontractors at a later date, the Contractor must provide, for the State's approval, the following no later than thirty (30) days prior to the commencement of services :

- A. The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.
- B. The relationship of the subcontractor to the Contractor.
- C. Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.
- D. A complete description of the Contract Activities that will be performed or provided by the subcontractor.
- E. Of the total bid, the price of the subcontractor's work.

9.6 State Staff, Roles, and Responsibilities

The State may designate multiple persons as contact persons for each initiative. The main contact persons include but are not limited to:

- A. DTMB Purchasing – contract changes; authorize payment of winning Contractors consulting services (invoices).
- B. DTMB Financial Services – authorize public utilities and third party energy vendor invoices, and bill back Cooperative members
- C. State Agencies - provide meter readings to supplier; work with the State to acquire delinquent meter readings

9.7 Other Roles and Responsibilities

The Contractor will interact with third parties such as the Michigan Public Service Commission (MPSC), public utilities, and third party energy providers.

10. Project Management**10.1 Project Plan**

Within ten (10) business days from Contract Start Date, Contractor will submit a Project Plan for day-to-day gas and electric activities and all current special projects. The Project Plan shall include but not be limited to the following aspects:

- A. Initiation Phase – outline the nature and scope of project. In detail, clearly, and accurately document the scope, deliverables, resources needed, evaluate potential risks, and proposed outcome; determine how the project can realistically be completed; and outline all benefits.
- B. Planning Phase– the project scope will be put in writing, outlining work to be performed. All stakeholders will be identified, a schedule will be developed, and deliverables will be itemized.
- C. Project Execution – resource tasks will be distributed and stakeholders will be informed of their responsibilities.
- D. Monitoring – Continuous monitoring of the project status and current progress to the actual plan. If behind schedule, develop a written plan to return to on-time status.
- E. Closure – All activities are completed; end results are summarized and reported.

The above Project Plan outline will also be required for any and all new and special projects. During the final year of the Contract, the Contractor will identify and incorporate additional Transition-Out tasks and activities. Contractor is responsible to keep the Project Plan up-to-date. Revised Project Plans will be submitted to the Contract Administrator, upon request.

10.2 Issue Management

Issues are those things that endanger the project. It may include imminent threats and events that may have already occurred. The Contractor will identify potential issues and is responsible to coordinate resolution with the affected party, i.e. Cooperative Member, public utility, State vendor or employee. Contractor will escalate unresolved or reoccurring issues to the Contract Administrator. Contractor will manage issues, as they arise, by maintaining an issue log. The log will include the following:

- A. Type of issue
- B. Date, time, person reporting issue
- C. Description of issue and its impact
- D. Priority level, based on impact. High priority issues will be those critical issues having the highest impact on a project. High impact issues will be immediately escalated by the Project Manager. Mid-priority issues have an impact on the project but will not stop the projects progression. Low-priority issues will not have much impact on the project.

- E. Status of each issue will be highlighted for easy identification. Red will indicate the issue has been escalated and cannot proceed before it is resolved; Yellow will indicate the resolution process is in progress; Green will indicate the issue has been resolved and no longer exists.
- F. Before closing out any issue, A description of the resolution and what has been done will be entered into the log.

If possible, the log will reside in an electronic, shared location of which all stakeholders will have access to update the status according to set guidelines; otherwise, communication of issues and resolutions will flow upwards, in written communication.

10.3 Change Management

If a proposed Contract change is approved by the Program Manager, the Program Manager will submit a request for change to the Contract Administrator (CA), who will make recommendations to the State regarding ultimate approval/disapproval of change request. If the State agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the Contract Administrator will issue an addendum to the Contract, via a Contract Change Notice. **Contractors who provide products or services prior to the issuance of a Contract Change Notice by the State, risk non-payment for the out-of-scope/pricing products and/or services.**

11. Meetings

Attend all meetings as requested.

12. Reporting

The Contractor shall provide reports, as specified. All reports must be submitted in an electronic, modifiable format, .pdf copies may also be provided. All reports and presentations shall be provided at no cost to the State. The State reserves the right to request additional reports. Failure to provide these services in a timely manner may be considered a breach of Contract and any resulting contract may be canceled.

The Contractor will provide monthly invoice auditing services by key points of review. First is audit of the supplier invoice. The volumes invoiced to the State and its members by the supplier must be accurate and invoiced per contractual language. Those purchases will be maintained in an excel program and have an independent calculation of the charge. Those line items may include Fixed volume and price purchases, First of Month nominated volumes defaulting to Index + or – supplier fee, and incremental, volumes associated with “Pool” allocations, and volumes needed to balance the delivery versus usage to keep in compliance with LDC requirements. Supplier invoiced volumes will also be audited against the utility statement and any discrepancies will be investigated/resolved. For those accounts behind MGU and SEMCO, which are invoiced by the supplier based on Usage plus applicable fuel loss, the fuel factor will be reviewed for accuracy. LDC invoices will be reviewed for accuracy in both dollars invoiced and volumes reported. The dollars invoiced will be verified against an independent recalculation of the charge. Any dollars invoiced for fees or penalties will be investigated and resolved. Metered usage will also be tracked in an Excel program and any unusual consumption will be investigated and resolved. Storage balances will also be verified for accuracy by verifying against an independent calculation.

12.1 To Contract Administrator:

- A. Upon request, membership and natural gas usage reports of Cooperative members.
- B. Upon request, updated tariff rate schedules, both electric and natural gas
- C. Upon request, Status reports of projects, and/or presentations relative to status of projects.
- D. No less than annually, or more as requested, cost savings analysis of gas, electrical special rates, and other future available programs.
- E. As needed, maintain listing of all energy audit findings, when completed for all 24/7 state facilities
- F. Adhoc Reports

12.2 To Program Manager:

- A. Monthly, spreadsheet of billing data, which compares the expected purchases and price against the invoices. The monthly spreadsheet must be received by the start of the 4th week of the following month. The Contractor works with each vendor on any discrepancies with invoices and communicates to the Program Manager.
- B. Monthly, gas electronic Excel workbooks for the State and all Cooperative members. The pricing workbook will include but not be limited to detail of individual fixed pricing, default Index pricing, the allocated “Pool” purchases, and cash pricing when applicable. Contractor will maintain the existing workbooks that are used to provide the State of Michigan and its members the monthly invoice detail, which can be customized to

- meet the member's particular requirements. Historical utility tariff rates will be maintained on the members reports to provide total burner tip costs.
- C. Upon Request, projected burner tip gas prices for a period of time.
 - D. Adhoc Reports

12.3 To State Agencies and Cooperative Members:

- A. As needed, summary of all forward purchases and open positions for the State and each cooperative member
- B. As needed, storage data, utility data, historical and projected usage for the State and each cooperative member
- C. As needed, consumption schedule of state facilities and individual cooperative members
- D. Monthly summary and detailed reports. Report designs and formats are customized for each member based on the member's needs, using the current State methodology.
- E. Adhoc Reports

13. Authorizing Document

The appropriate authorizing document for the Contract will be a purchase order.

14. Invoice and Payments

14.1 Invoice Requirements

All invoices submitted to the State must include:

- A. Date
- B. Contract number
- C. Purchase order number
- D. Description of the Contract Activities
- E. Total price

14.2 Payment Methods

- A. The State will make payment for Contract Activities via Electronic Funds Transfer (EFT).
- B. Prices shall be fixed and firm for the base contract period.

14.3 Compensation

The Contractor will be paid a flat monthly rate. The monthly rate includes all costs. No additional costs, such as travel, phone, or copying costs may be billed separately. The monthly rate will be the sole compensation of the Contractor. Separate billing of Cooperative members or taking a percent of savings found is not acceptable. Overtime, holiday pay, and travel expenses will not be paid. Contractor's flat monthly rate is identified on the attached "**Exhibit "B" - Pricing**"

15. Liquidated Damages

- 15.1** Late or improper completion of the Contract Activities will cause loss and damage to the State and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, if there is late or improper completion of the Contract Activities the State is entitled to collect liquidated damages in the amount of \$5,000 and an additional \$100 per day for each day Contractor fails to remedy the late or improper completion of the Work.

16. Additional Terms and Conditions Specific to this SOW

- 16.1** The Contractor must maintain corporate headquarters located in Michigan and participate in meetings throughout Michigan, as directed.
- 16.2** As specified in the Standard Terms and Conditions, Article 30 – State Data. Contractor shall not contact Cooperative member(s) for direct marketing purposes, or provide member contact information to any party for any purposes outside of necessary contract activities.
- 16.3 Conflict of Interest**
By signing this Contract, the Contractor and any subcontractor(s) certify they:
- A. Do not: work for gas suppliers, interstate pipeline companies, intrastate pipeline companies, electric suppliers, transmission companies, utility companies, or any other energy related companies such as performance contractors, alternative energy suppliers, etc.
 - B. Will only work for energy product buyers (preferably public sector), not energy buyer sellers (such as natural gas), as part of their proposal. The State reserves the right to view a customer and/or strategic business partner list from the Contractor and/or their subcontractor(s).

- C. Do not work for any energy products sellers or brokers (such as natural gas); certifies that during the life of the Contract the Contractor will not buy or sell energy products.
- D. Have worked in the natural gas industry for a minimum of three (3) years and are familiar with utility/gas regulations.

The Contractor must immediately notify the Contract Administrator, in writing, of any changes to this section.

STATE OF MICHIGAN

Contract No. 071B550084
Utility Consultant - Statewide

EXHIBIT B - PRICING

1. The price proposal includes all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State.
2. There are no quick payment terms.
3. By signing this contract, Contractor certifies, prices were arrived at independently, and without consultation, communication, or agreement with any other Contractor.

PRICING

Monthly Pricing: \$3,400.00

Quick Payment Terms: None